

PLI PRIVACY LAW INSTITUTE
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TOP TEN EVENTS
OF 2005-2006

Françoise Gilbert
Attorney-at-Law,
Managing Director and Founder
IT Law Group
Palo Alto, CA
www.itlawgroup.com

John B. Kennedy
Partner
LeBoeuf Lamb Green & MacRae LLP
New York, NY
www.llgm.com

Paul M. Schwartz
Professor of Law
UC Berkeley Boalt Hall
Berkeley, CA
www.paulschwartz.net

Thomas J. Smedinghoff
Partner
Wildman, Harrold LLP
Chicago, IL
www.wildmanharrold.com

10 – Rise of the Privacy Professional

- CPO's emerging in government and private sector alike -- important participants in privacy landscape
- CPO's also playing an important role in data security debates
- Professionalization— major organization (International Association of Privacy Professionals) and official certification process

9 – Spyware

- One definition– software designed to intercept, monitor, or take partial control of a computer's operation without consent of that machine's owner or user
- State legislation in at least 12 states, and considered in 2006 in at least another 18 states
- Litigation as well– e.g., AG Eliot Spitzer sues Intermix Media

8 – Pretexting

- The obtaining of account holder records by pretending to be the account holder and fooling a customer service representative (“human engineering”)
- Online data brokers and other companies have openly advertised the service
- Several federal bills specifically address practice
- Georgia state law (SB 455) prohibits pretexting
- Federal Gramm-Leach-Bliley Act prohibits obtaining customer financial information through false pretenses (Sec. 6821)

7 – Electronic Health Records

- HIPPA Security Rule takes effect in April 2005
- It requires “adequate administrative, physical, and technical safeguards to prevent unauthorized access to electronic patient information”



6 – Datran case

- NY AG initiates case against Datran and Gratis Internet
- Datran knew of Gratis' promise to consumers not to "lend, sell, or give out" any PII
- Datran uses PII to send out millions of unsolicited emails
- Case settled— Datran pays out \$1.1M in penalties, disgorgement, and costs

5 – Offshoring Consumer Data

- US companies have been sending data, including consumer PII, overseas for processing
- Not prohibited by any law, but some proposed legislation, federal and state, seek to regulate/limit practice



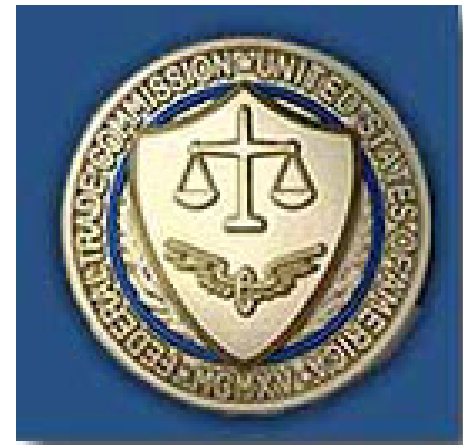
4 – EU and Data Retention



- EU Directive provides for data retention of user communications
- Intended to cover investigations into terrorism and all “serious crime”
- US AG Alberto Gonzales now proposing data retention rules for US

3 – FTC: Choicepoint, BJ's Wholesale Club and Other Settlements

- ChoicePoint-- \$10M in civil penalties, \$5M in consumer redress
- BJ Wholesale— failed to encrypt consumer info, and stored info in easily accessible files
- Eli Lilly, Guess, Petco



2 – Data Security Breach Notification– and Litigation

- 31 states have enacted security breach notification legislation
- State laws can differ in important ways
- Laws sometimes do not require notification if “investigation reveals harms to be unlikely”
- Various federal bills under consideration

1 – NSA Wiretapping

- Newspaper accounts reveal widespread wiretapping by NSA on orders of President with cooperation of telecom co's
- Lawsuits filed by EFF, Center for Constitutional Rights and others

